Windemere Manor, Inc. and Local 50, Service Employees International Union, AFL-CIO, CLC. Case 14-CA-23180

November 25, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by Local 50, Service Employees International Union, AFL-CIO, CLC (the Union), on August 16, 1994, the General Counsel of the National Labor Relations Board issued a complaint on September 20, 1994, against Windemere Manor, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.

On October 4, 1994, the Respondent filed an answer to the complaint. However, by letter dated October 12, 1994, the Respondent withdrew its answer with the understanding that a Motion for Default Summary Judgment would be filed.

On October 25, 1994, the General Counsel filed a Motion for Default Summary Judgment with the Board. On October 27, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that although the Respondent initially filed an answer to the complaint, it subsequently withdrew its answer. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations are considered to be admitted.¹

Accordingly, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

¹ See Maislin Transport, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation with an office and place of business located in Saint Louis, Missouri, has been engaged as a health care institution in the operation of a nursing home providing inpatient medical and professional care services for the elderly. During the 12-month period ending August 31, 1994, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000, and purchased and received at its Saint Louis, Missouri facility goods valued in excess of \$50,000 directly from points outside of the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service and maintenance employees employed by the Employer at the Employer's Florissant, Missouri facility. EXCLUDING RN's, LPN's, activity director, beautician, medical records clerks, dietary department head, housekeeping department head and laundry department head, maintenance department head, business office clerical and professional employees, guards and supervisors, as defined in the Act.

Since about April 2, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since about August 1, 1993, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 7, 1994, to January 7, 1997.

From about April 2, 1990, to August 1, 1993, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the unit employed by Black Jack #1, Inc. d/b/a Northwoods Gardens Nursing Center.

At all times since about August 1, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

The collective-bargaining agreement described above provides in article 26 that the Respondent shall make

certain payments on behalf of the employees in the unit to the Local 50, Service Employees International Union Benefit Service Trust, and also provides in an attached Benefit Service Trust Agreement that the Respondent will abide by the terms and conditions of the Benefit Service Trust, which includes the assessment of late fees.

Since about February through May 1994, the Respondent has failed and refused to make the payments as described above. Although the subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above without prior notice to the Union, without affording the Union an opportunity to bargain with respect to this conduct, and without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, from about February through May 1994, to make payments to the Local 50, Service Employees International Union Benefit Service Trust, including late fees, as required by the 1994-1997 agreement, we shall order the Respondent to make whole its unit employees by making all such delinquent payments, including any additional amounts due in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Windemere Manor, Inc., Saint Louis, Missouri, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain in good faith with Local 50, Service Employees International Union, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the unit described below, by failing to make payments to the Local 50, Service Employees International Benefit Service Trust, including late fees, as required by the 1994–1997 collective-bargaining agreement:

All full-time and regular part-time service and maintenance employees employed by the Employer at the Employer's Florissant, Missouri facility. EXCLUDING RN's, LPN's, activity director, beautician, medical records clerks, dietary department head, housekeeping department head and laundry department head, maintenance department head, business office clerical and professional employees, guards and supervisors, as defined in the Act.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Comply with the terms and conditions of the 1994–1997 collective-bargaining agreement by making all delinquent payments to the Benefit Service Trust, including late fees, as required by the agreement, and make the unit employees whole for any loss of benefits and expenses ensuing from its failure to do so from February through May 1994, with interest, as set forth in the remedy section of this decision.
- (b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (c) Post at its facility in Saint Louis, Missouri, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 25, 1994

William B. Gould IV,	Chairman
James M. Stephens,	Member
Margaret A. Browning,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Local 50, Service Employees International

Union, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the unit described below, by failing to make payments to the Local 50, Service Employees International Benefit Service Trust, including late fees, as required by the 1994–1997 collective-bargaining agreement:

All full-time and regular part-time service and maintenance employees employed by us at our Florissant, Missouri facility. EXCLUDING RN's, LPN's, activity director, beautician, medical records clerks, dietary department head, house-keeping department head and laundry department head, maintenance department head, business office clerical and professional employees, guards and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL comply with the terms and conditions of the 1994–1997 collective-bargaining agreement by making all delinquent payments to the Benefit Service Trust, including late fees, as required by the agreement, and WE WILL make the unit employees whole for any loss of benefits and expenses ensuing from our failure to do so from February through May 1994, with interest.

WINDEMERE MANOR, INC.